

FILED
Clerk
District Court

APR 17 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

O'CONNOR BERMAN DOTTS & BANES
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Attorneys for Plaintiff

**IN THE DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

QIAN XIAOLI,

Plaintiff,

vs.

GRACE INTERNATIONAL, INC.,

Defendant.

Civ. No. 07- **0017** -

**COMPLAINT
and JURY DEMAND**

Plaintiff Qian Xiaoli hereby complains against the Defendant as follows:

Jurisdiction and Venue

1. The Court has jurisdiction of this matter pursuant to the Covenant to Establish a Commonwealth of the Northern Mariana Islands In Political Union With the United States of America (Covenant) (authorizing Congress to establish this Court), 48 U.S.C. § 1821-22 (establishing this Court and granting it the jurisdiction of a district court of the United States), 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1343 (jurisdiction over civil rights actions). Venue is proper in this district under 28 U.S.C. § 1391(b) and (c).

Parties

2. Plaintiff Qian Xiaoli is a citizen of the People's Republic of China and a nonresident worker in the CNMI.

3. Defendant Grace International, Inc., is a corporation organized and existing under the laws

1 of the Commonwealth of the Northern Mariana Islands, with its principal place of business on
2 Saipan. At all times pertinent to this Complaint, it was engaged in the business of garment
3 manufacturing, and was the employer of Plaintiff within the meaning of the Americans With
4 Disabilities Act of 1990.

5
6
7 **Facts**

8 8. Plaintiff was employed as a garment worker by Defendant beginning on or about October
9 15, 2002. Her contract of employment was renewed on or about October 15, 2003, and renewed
10 again on or about October 15, 2004.

11
12 9. During the course of her third year of employment, Plaintiff acquired a disability,
13 specifically chronic back pain which has been diagnosed as "mechanical lumbar spine dysfunction,"
14 and which substantially limited one or more of her major life activities, including lifting and sitting.

15
16 10. With reasonable accommodation, Plaintiff could perform the essential functions of her
17 employment position with Defendant.

18
19 11. Reasonable accommodation of Plaintiff would not have imposed an undue hardship on
20 the operation and business of Defendant.

21
22 12. Defendant neglected, failed and refused to make reasonable accommodation for
23 Plaintiff's disability.

24
25 13. Defendant neglected, failed and refused to renew Plaintiff's contract of employment in
26 October 2005, because of her disability.

1
2 14. The actions of Defendant set forth in this Complaint were taken intentionally, and with
3 malice or reckless indifference to the federally protected rights of Plaintiff.
4

5 **Cause of Action – Violation of ADA**

6 15. Paragraphs 1-14 of the Complaint are realleged and incorporated here by reference.
7

8 16. Defendant's failure to make reasonable accommodation for Plaintiff, and its failure to
9 renew her employment in October 2005 because of her disability, constitute unlawful discrimination
10 within the meaning of the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*
11

12 17. Plaintiff timely filed a discrimination charge against Defendant with the Equal
13 Employment Opportunity Commission (EEOC), and received notice of her right to sue from the
14 EEOC within ninety days of the filing of this Complaint. A copy of the EEOC notice is attached
15 hereto as an Exhibit.
16

17 18. By reason of Defendant's unlawful discrimination, Plaintiff is entitled to back pay,
18 compensatory and punitive damages from Defendant, and other applicable remedies as set forth in
19 42 U.S.C. § 2000e-5(g) and 42 U.S.C. § 1981a.
20

21 WHEREFORE, Plaintiff prays the Court grant her the following relief:
22

23 1. An order enjoining the Defendant from engaging in unlawful employment practices.
24

25 2. An order requiring such affirmative action by Defendant as may be appropriate, including
26 reinstatement or hiring of Plaintiff, with back pay, or any other equitable relief as the court
27

1 deems appropriate.

2
3 3. Compensatory and punitive damages as provided by law.

4
5 4. Interest.

6
7 5. Costs.

8
9 6. Attorney's fees.

10
11 7. Such other and further relief as the Court deems just and proper.

12
13 **Jury Demand**

14 Plaintiff demands a trial by jury of all issues so triable.

15
16 Respectfully submitted this 16th day of April, 2007.

17
18 O'CONNOR BERMAN DOTTS & BANES
19 Attorneys for Plaintiff

20
21 By: 

22 Joseph E. Horey

23 3232-01-070415-PL-complaint.wpd

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Xiao Li Qian
c/o Joseph Horey, Esq.
O'Connor Berman Dotts & Banes
P.O. Box 501969
Saipan, MP 96950

From: Honolulu Local Office - 486
300 Ala Moana Blvd
Room 7-127
Honolulu, HI 96850



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

378-2006-00008

James Yao,
Investigator

(808) 541-3720

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA **must be filed in a federal or state court WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.



The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Timothy A. Riera

Timothy A. Riera,
Director

2/17/07

(Date Mailed)

Enclosures(s)

cc: F. Matthew Smith, Esq.
2nd Floor, UIU Building, San Jose
P.O. Box 501127
Saipan, MP 96950

Law Offices
O'Connor Berman Dotts & Banes

RECEIVED

By: *Jhen*
Date: 2/12/07
Time:

EX.

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
or the Age Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit **before 7/1/02** -- not 12/1/02 -- in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.